

REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Final Office Action mailed on November 24, 2009, and the references cited therewith.

Claim 67 is amended, claim 81 is canceled, and claims 1-66 and 73 were previously canceled; as a result, claims 67-72, 74-80, and 82 are now pending in this application.

Examiner Interview Summary

Applicant thanks Examiner Willse for participating in a telephone interview on January 6, 2010. During the interview, Applicant and the Examiner discussed possible amendments to independent claim 67 which could overcome the rejections contained in the Final Office Action mailed on November 24, 2009.

Applicant and the Examiner appeared to agree that amending independent claim 67 to replace “being mated” with “configured to mate” would overcome the 112 and 101 rejections. Applicant and the Examiner also appeared to agree that amending independent claim 67 to recite that the second leg has “an increasing diameter from a superior end of the second leg to an inferior end of the second leg” would overcome the Martin reference.

§ 112 Rejection of the Claims

Claims 67-72 and 74-82 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses the rejection as follows.

Page 2 of the Final Office Action mailed on November 24, 2009, appears to allege that the language “being mated” recited in independent claim 67 renders the scope of the claims confusing because it creates uncertainty as to whether independent claim 67 positively recites an implanted state, or whether the scope of independent claim 67 encompasses a functional capability of the device. Applicant

has amended independent claim 67 to replace “being mated” with “configured to mate” in order to clarify that independent claim 67 recites a functional capability of the device, e.g., the capability of the extender to mate with the first leg.

As such, Applicant respectfully submits that independent claim 67 is not indefinite. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 112, second paragraph, rejection of independent claim 67, as well as those claims that depend therefrom.

§ 101 Rejection of the Claims

Claims 67-72 and 74-82 were rejected under 35 USC § 101 because the claimed invention is directed to non-statutory subject matter. Applicant respectfully traverses the rejection as follows.

Pages 2-3 of the Final Office Action appear to allege that the claims are drawn to non-statutory subject matter involving a human being because the claims encompass an actual mated insertion within vasculature of a human. As previously discussed above, Applicant has amended independent claim 67 to replace “being mated” with “configured to mate” in order to clarify that independent claim 67 recites the functional capability of the device. Hence, Applicant respectfully submits that independent claim 67, as amended, does not encompass an actual mated insertion within vasculature of a human.

As such, Applicant respectfully submits that independent claim 67 is not directed to non-statutory subject matter. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 101 rejection of independent claim 67, as well as those claims that depend therefrom.

§ 102 Rejection of the Claims

Claims 67-72 and 74-82 were rejected under 35 USC § 102(e) as being anticipated by Martin (U.S. Patent No. 5,653,743). Applicant respectfully traverses the rejection as follows.

Independent claim 67, as amended, recites:

a body, the body having a superior end portion and a bifurcated inferior end portion defining a first leg and a second leg, the first leg being longer than the second leg and the second leg having an increasing diameter from a superior end of the second leg to an inferior end of the second leg, wherein the body is configured so that the first leg extends into one of the second and third sections of vasculature and the second leg terminates in the first section of vasculature

Support for the amendment can be found in Applicant's specification as originally filed at, for example, page 19, lines 3-5, and Figures 1-2, among other locations.

From Applicant's review of the Martin reference, the reference does not teach each and every element and limitation of independent claim 67, as amended. For example, the Martin reference does not teach the element referenced above with respect to independent claim 67.

For example, the Martin reference appears to teach a graft 2 having a top end 5 and bottom end 6. (Column 2, lines 49-51 and 61-63; Figure 1). The Martin reference also appears to teach that graft 2 includes an opening 7, and that a short tube graft 8 is attached to graft 2 at opening 7. (Column 2, line 65, through column 3, line 3; Figure 1).

The Martin reference, however, does not teach that graft 2 has an increasing diameter from top, e.g., superior, end 5 to bottom, e.g., inferior, end 6. Rather, the Martin reference appears to teach that graft 2 has a decreasing diameter from superior end 5 to inferior end 6, as shown in Figure 1. That is, the Martin reference appears to teach that the diameter of graft 2 tapers, e.g., decreases, from a diameter of 8-11 mm at superior end 5 to a diameter of 3-6 mm at inferior end 6. (Column 2, lines 61-65).

Further, the Martin reference does not teach that short tube graft 8 has an increasing diameter from opening 7, e.g., the superior end of short tube graft 8, to the inferior end of short tube graft 8. Rather, the Martin reference appears to teach that short tube graft 8 has a constant diameter from the superior end of short tube graft 8 to the inferior end of short tube graft 8, as shown in Figure 1. That is, the

Martin reference appears to teach that the diameter of the superior end of short tube graft 8 is the same as the diameter of the inferior end of short tube graft 8.

As such, Applicant respectfully submits that the Martin reference does not teach each and every element and limitation of independent claim 67, as amended. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 102 rejection of independent claim 67, as well as those claims that depend therefrom.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's below listed attorney at (612) 236-0125 to facilitate prosecution of this matter.

CERTIFICATE UNDER 37 C.F.R. §1.8:

Date of Deposit: **January 21, 2010**

This paper or fee is being deposited on the date indicated above with the United States Patent and Trademark Office via USPTO EFS, and is addressed to: MS: Amendment Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450

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